CF0000064371

CrA-1908/2000

(6)

KII - 89(Jail)C.J.P.R./9-94

APPEAL OF PRISONER

No. 3TNO-10/99 Name - सियाराम Division Bench (Criminal)

Father's name - मंगला राम - साधी

Residence - 302-मा०दे०वि० Age - 50 वर्ष

Sentenced to - आजीवन कारावास on - 7/6/2000

Under Section - धारा 500 या 4 साल by सत्र न्यायाधीश सरगुजा (अम्बिकापुर) मध्यप्रदेश

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all if the Prisoner states that he does not wish to be represented by legal practition- the court may proceed at once with the case and will not be obliged to give a hearing to my legal practitioner who should app appear.

1. Date of Application for copy of Judgement- संलग्न निर्णयप्रतिलिपि
2. Date on which copy received- - 21-7-2000
3. Date on which Appeal sent- - - 21-7-2000
4. Whether the prisoner wishes to be represented or not- -

No. - 3TNO-10/99 - Name - सियाराम पि० मंगलाराम

Confined in - के-द्वीय - Jail- बिलासपुर (म.प्र.)

No. - - 23 - Dated - 21-7-2000 ~~199~~

Forwarded to the मा० सत्र न्या० महो० सा० धारा 302 भा०दं०वि० मध्यप्रदेश अम्बिकापुर

together with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

Superintendent

Jail

2584
24-7-2000

Date of receipt in ---------- Office ----------

Date of receipt of record to accompany the ----------

Memo of Appeal to the Appellate Court- ----------

No. - - - - - - - - - - Dated ..... 199 -----

Forwarded to the :-

Section I/C 26/7/2000 50(a)

Date of receipt in Appellate Court - - - - - - - - - -

High Court of Madhya Pradesh
JABALPUR.
26 JUL 2000
Reg. No. 124
Receipt Clerk
High Court, Jabalpur

1/2/11

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(17)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.App./908/ सन् 2000

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DB: HON'BLE MR. L.C.BHADOO,
& HON'BLE MR. VIJAY. K. SHRIVASTAVA, JJ

28.11.2005

Mrs. Kiran Jain, counsel for the appellant.

Mr. Ravindra Agarwal, Panel Lawyer for the State.

Oral judgment.

At the request of learned counsel for the parties the arguments for final disposal of this appeal were heard.

By this criminal appeal under Section 374 (2) of the Cr.P.C. through the Superintendent (Jail), Bilaspur, appellant Siyaram has questioned the legality of judgment of conviction and sentence dated 07.06.2000 passed by learned Sessions Judge, Sarguja (Ambikapur) in S.T.No.10/99 whereby learned Sessions Judge after holding the accused/appellant guilty for committing murder of his brother Pilooram convicted him under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and to pay fine of Rs.500/-, in default of payment of fine to further undergo S.I. for 04 months.

In brief, the prosecution case is that on 06.12.1998 at about 10 a.m. in the morning when deceased Pilooram was digging the land and saying that less share in partition has been given to him, accused/appellant came there and asked Pilooram to stop digging, when Pilooram did not stop, they started quarreling and in that process accused/appellant assaulted Pilooram on his head with a spade as a result of which Pilooram fell down and died on the spot. The incident was witnessed by PW-1 Mangra Ram -father of deceased

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

& accused, PW-3, Lalooram, PW-4 Latiram and other persons. Mangta Ram, father of deceased & accused informed the villager Hari Shankar and Sarpanch of village namely Shiv Prasad Gupta and from there the matter was reported by Mangta Ram to the Police Station Kamleshwar under Ex.P-1. The Officer In-charge Police Station Kamleshwar Shri Ranjit Ekka (PW-5) recorded the merg intimation and on 7.12.1998 left for the scene of occurrence and after reaching the scene of occurrence prepared the site inspection report Ex.P-5. After giving notice to the Panchas Ex.P-6, he prepared the Panchnama of dead body Ex.P-7. Dead body of Pilooram was sent for post mortem examination to the Government Hospital, Narmadapur. The Investigation Officer (PW-5) took into possession the spade of deceased Pilooram under Ex.P-9 and blood stained soil & plain soil from the place of occurrence. The Investigating Officer also took into possession the weapon of offence i.e. spade at the instance of accused under Ex.P-11 on which the blood and hairs of the deceased were stuck. Dr. R.S. Singh (PW-6) conducted the postmortem on the body of deceased Pilooram on 7.12.1998 and prepared the postmortem report Ex.P-20.

After completion of investigation, the charge sheet was filed against the accused/appellant in the Court of learned Chief Judicial Magistrate, Ambikapur who in turn committed the case to learned Sessions Judge, Sarguja (Ambikapur) for trial. Learned Sessions Judge after perusal of the record framed the charge against the accused/appellant for commission of offence under Section 302 of

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मामला क्रमांक ..... सन् 200

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3c	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the I.P.C., read over and explained the same to the accused/appellant who denied the charge and pleaded not guilty.

The prosecution in order to prove the charge against the accused/appellant examined as many as six witnesses. Learned Sessions Judge recorded the statement of accused/appellant under Section 313 of the Cr.P.C. in which he stated that disputed place belongs to him, he had not assaulted the deceased and denied the prosecution evidence appearing against him. He further stated that he has been falsely implicated on account of animosity, the deceased was quarrelling with him since last three years and he died on his own.

Learned Additional Sessions Judge, after hearing the Additional Public Prosecutor & counsel for the accused convicted and sentenced the accused/appellant herein in the manner as mentioned in the earlier part of this judgment.

We have heard Mrs. Kiran Jain, counsel for the accused/appellant & Mr. Ravindra Agarwal, Panel Lawyer for the State.

Learned counsel for the accused/appellant did not dispute the fact that death of Pilooram was homicidal in nature. Apart from that from the evidence of eyewitnesses PW-3 & PW-4, it is proved that the accused/appellant assaulted the deceased with the spade and on account of which the deceased died. Dr. R.S. Singh (PW-6) has stated in his evidence that he had conducted the postmortem on the body of deceased Pilooram on 7.12.1998 and found that there was a incised wound in the size of 20 cm on the upper side of head, this injury was

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

caused by a sharp edged weapon. Skull bone was also found fractured. Injury was anti mortem in nature and nature of death was homicidal. Therefore, in view of the above evidence of witnesses and medical evidence, it stands proved that the death of deceased Pilooram was homicidal in nature.

Learned counsel for the accused/appellant has also not disputed the involvement of accused/appellant in committing the murder of his brother Pilooram, however, she submitted that from the facts and evidence of the prosecution, offence against the accused/appellant under Section 304 Part II of IPC was made out and he has been wrongly convicted for commission of offence under Section 302 of the I.P.C.

On the other hand, learned Panel Lawyer for the State Shri Ravindra Agarwal supported the impugned judgment of the trial Court.

From the evidence of eyewitnesses PW-3 Lalooram & PW-4 Latiram it is established that the accused/appellant was the author of fatal injury on account of which Pilooram fell down and died on the spot. As such, the involvement of accused/appellant in assaulting Pilooram is proved and to this extent the finding of the trial court is based on the legal evidence.

Now coming to the question as to whether the prosecution has been able to prove the offence under Section 302 of the I.P.C. against the accused/appellant, PW-4-Latiram in his cross-examination has stated that there was some dispute between the deceased & the accused regarding partition of land in question where the two

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

brothers quarreled. The accused has asked the deceased not to dig the place but the deceased did not stop, therefore, the accused attacked deceased with the spade. PW-1 Mangra Ram–father of deceased & accused in Para-6 of his evidence has stated that the accused and deceased started quarreling regarding partition of land and in that process they reached near the grainary and there the accused assaulted the deceased with the spade. The Investigating Officer (PW-5) in Para 16 of his cross-examination has stated that during investigation he came to know that there was some dispute ~~arose~~ on the spot. Therefore, from the above evidence it has come on record that there was some dispute between the two brothers i.e. deceased Pilooram & accused Siyaram regarding partition of land where the incident took place when the deceased was digging the place, the accused came there, some quarrel took place and accused all of a sudden assaulted the deceased with the spade once only and thereafter left the scene of occurrence.

In view of the above evidence, it can safely be inferred that the accused/appellant assaulted the deceased all of a sudden in a spur of moment when quarrel started regarding partition of land without preplan or premeditation and without taking undue advantage of the situation. As such, the case of accused/appellant is squarely falls under Exception-4 of Section 300 of the Cr.P.C, as there is no evidence on the record that the accused/appellant assaulted his brother Pilooram with an intention to cause his death or he assaulted him with an intention to cause an injury which is likely to cause death in the ordinary course of the nature. Accordingly, we are of the

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

considered opinion that the offence against the accused Siyaram on the facts and circumstances of the case was made out under Section 304 Part-II of the I.P.C. and to this extent the finding of the trial court holding the accused/appellant guilty under Section 302 of the I.P.C. cannot be sustained.

In the result, the appeal is partly allowed, the conviction and sentence passed under Section 302 of the I.P.C. are set aside and the accused Siyaram is acquitted of the charge under Section 302 of the IPC and sentence awarded under that section, instead thereof appellant Siyaram is convicted under Section 304 Part-II of the I.P.C. and sentenced to undergo R.I. for 08 years. The accused is in custody since 8.12.1998 till today, therefore, this period shall be set-off under Section 428 of the Cr.P.C.

Certified copy as per rules.

Sd/-
V.K.Shrivastava
Judge

Sd/-
L.C. Bhadoo
Judge

[illegible] Roshan/-

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